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7 UNITED STATES DISTRICT COURT

8 FOR THE EASTERN DISTRICT OF WASHINGTON

9 BRUCE HARALA,

10 Plaintiff,

11 vs.

12 SUN LIFE ASSURANCE COMPANY  
13 OF CANADA, a foreign corporation  
14 doing business in the State of  
Washington,

15 Defendant.

Case No. 2:20-CV-0476-TOR

PROTECTIVE ORDER

16 BEFORE THE COURT is the parties' Stipulated Motion for Protective Order.  
17 ECF No. 54. The motion was submitted for hearing without oral argument. Having  
18 reviewed the file and the records therein, the Court is fully informed. Pursuant to  
19 the parties' stipulation, the Motion is granted and the following Stipulated Protective  
20 Order entered.

1           The Court recognizes that many of the documents and much of the  
2 information being sought through discovery in the above-captioned action are, for  
3 competitive reasons, normally kept confidential by the parties. The materials to be  
4 exchanged throughout the course of the litigation between the parties may contain  
5 trade secret or other confidential research, development, or commercial information,  
6 as is contemplated by Federal Rule of Civil Procedure 26(c)(1)(G). The parties have  
7 agreed to be bound by the terms of this Protective Order (“Order”) in this action to  
8 facilitate the document production and disclosure, and protect the respective  
9 interests of the parties in their trade secrets and/or confidential information. This  
10 Order shall remain in effect unless modified pursuant to the terms contained in this  
11 Order.

12           IT IS THEREFORE ORDERED that,

13           The following Definitions shall apply in this Order:

14           A. The term “**Confidential Information**” will mean and include  
15 information contained or disclosed in any materials, including documents, portions  
16 of documents, answers to interrogatories, responses to requests for admissions,  
17 deposition testimony, and transcripts of depositions. Confidential Information may  
18 be copies and/or summaries, digests or abstracts derived therefrom, but all such  
19 copies, digests, abstracts and summaries shall be considered CONFIDENTIAL and  
20 shall be subject to the provisions of this Order.

1           B.           The term “**Counsel**” will mean outside counsel of record, and other  
2 attorneys, paralegals, secretaries, and other support staff employed in the following  
3 law firms: Ogletree, Deakins, Nash, Smoak & Stewart, P.C.; Paukert & Troppmann,  
4 PLLC; and Dawson & Rosenthal, P.C.

5           C.           The term “**Action**” will mean the lawsuit captioned BRUCE  
6 HARALA v. SUN LIFE ASSURANCE COMPANY OF CANADA, Case No. 2:20-  
7 cv-00476-TOR, pending in the Eastern District of Washington.

8           The following provisions shall apply in this litigation:

9           1.           Each party to this litigation that produces or discloses any materials,  
10 answers to interrogatories, responses to requests for admission, trial testimony,  
11 deposition testimony, and transcripts of trial testimony and depositions, or  
12 information that the producing party believes should be subject to this Protective  
13 Order may designate the same as “CONFIDENTIAL.” Any party may designate  
14 information as “CONFIDENTIAL” only if, in the good faith belief of such party and  
15 its Counsel, the unrestricted disclosure of such information could be harmful to the  
16 business or operations of such party. This includes but is not limited to trade secret  
17 or other confidential research, development, financial, customer related data or other  
18 commercial information. Confidential Information shall be so designated by  
19 marking the respective pages of the document, and where appropriate, the entire  
20 document with the legend “CONFIDENTIAL.” Any such designation shall be

1 precise and specific as to the document or parts of documents designated as  
2 “CONFIDENTIAL,” including identification by Bates number.

3 2. Documents made available for inspection in response to a request for  
4 production need not be marked “CONFIDENTIAL” prior to inspection. However,  
5 the producing party following an inspection can mark those documents designated  
6 for copying that contain Confidential Information as “CONFIDENTIAL.”

7 3. Designation of materials as “CONFIDENTIAL” shall not operate as an  
8 admission by any party receiving the materials that the information is or is not: (a)  
9 confidential; (b) privileged; (c) relevant; or (d) admissible in evidence at trial.

10 4. Other individuals or entities producing documents or information in  
11 this lawsuit, including individuals or entities responding to subpoenas, may use the  
12 “confidential” designation under this Order consistent with their legitimate interests  
13 to protect information that they deem to be confidential or proprietary.

14 5. Whenever a deposition taken on behalf of any party involves the  
15 disclosure of Confidential Information of any party:

16 (a) the deposition or portions of the deposition must be designated  
17 as containing Confidential Information subject to the provisions of this Order;  
18 such designation must be made on the record whenever possible, but a party  
19 may designate portions of depositions as containing Confidential Information  
20 after transcription of the proceedings; a party will have until thirty (30) days

1 after receipt of the deposition transcript to inform the other party or parties to  
2 the action of the portions of the transcript to be designated  
3 “CONFIDENTIAL.”

4 (b) the disclosing party will have the right to exclude from  
5 attendance at the deposition, during such time as the Confidential Information  
6 is to be disclosed, any person other than the deponent, Counsel (including  
7 their staff, associates, and all other employees of such counsel who are  
8 assisting in the prosecution and/or defense of this suit), the court reporter, and  
9 the person(s) agreed upon pursuant to paragraph 8, below; and

10 (c) The originals of the deposition transcripts and all copies of the  
11 deposition must bear the legend “CONFIDENTIAL,” as appropriate, and the  
12 original or any copy ultimately presented to a court for filing must not be filed  
13 unless it can be accomplished under seal, identified as being subject to this  
14 Order, and protected from being opened except by order of this Court.

15 6. All Confidential Information designated as “CONFIDENTIAL” must  
16 not be disclosed by the receiving party to anyone other than those persons designated  
17 within this Order and must be handled in the manner set forth below, and in any  
18 event, must not be used for any purpose other than in connection with this litigation,  
19 unless and until such designation is removed either by agreement of the parties, or  
20 by order of the Court.

1           7. Information designated “CONFIDENTIAL” may be viewed only by:

2           (a) The parties to this Action;

3           (b) Counsel (as defined in paragraph C above);

4           (c) Independent experts; potential expert witnesses or consulting  
5 experts; clerical employees associated with such experts; and actual or  
6 potential deposition or trial witnesses identified in this Action. Prior to  
7 receiving any Confidential Information, each of the above- listed individuals  
8 must execute a copy of the “Agreement to Be Bound by Stipulated Protective  
9 Order,” attached hereto as Exhibit A. Counsel for the parties shall maintain a  
10 copy of all Agreements signed by such persons and shall furnish copies to  
11 opposing counsel. No Confidential Information shall be disclosed to any  
12 person who refuses or has failed to sign the Agreement. In the event any  
13 person who has signed an Agreement refuses to comply therewith or fails to  
14 adhere to the terms thereof, Counsel shall make no further disclosure to such  
15 person and shall immediately notify opposing counsel for in writing;

16           (d) The Court and any Court staff and administrative personnel;

17           (e) Any court reporter employed in this litigation and acting in that  
18 capacity; and

1 (f) Any person indicated on the face of the document to be its author  
2 or co-author, or any person identified on the face of the document as one to  
3 whom a copy of such document was sent before its production in this action.

4 8. All information that has been designated as “CONFIDENTIAL” by the  
5 producing or disclosing party, and any and all reproductions of that information,  
6 must be retained in the custody of the Counsel for the receiving party, except that  
7 independent experts authorized to view such information under the terms of this  
8 Order may retain custody of copies such as are necessary for their participation in  
9 this litigation, but only during the course of this litigation. The principals, employees  
10 or other agents of the parties who received information prior to and apart from this  
11 litigation that was subsequently disclosed in this litigation as being  
12 “CONFIDENTIAL” may also retain copies of that information as is necessary for  
13 use in their respective businesses.

14 9. Materials designated “CONFIDENTIAL,” and all information in them,  
15 may be discussed or referred to in pleadings, motions, affidavits, briefs, or other  
16 papers filed with the Court, or attached as exhibits to them, provided the parties  
17 comply with the procedures set forth in the Federal Rules of Civil Procedure and  
18 applicable Local Rules of this Court, and provided that such “CONFIDENTIAL”  
19 materials and information, and any portion of any paper filed with the Court that  
20 discusses or refers to them, are stamped “CONFIDENTIAL.”

1           10. Confidential Information and materials designated  
2 “CONFIDENTIAL” shall be used solely for the prosecution or defense of this  
3 action. A party who wishes to use Confidential Information and/or materials  
4 designated “CONFIDENTIAL” for a purpose other than the prosecution or defense  
5 of this action must request permission, in writing, from Counsel for the producing  
6 party. The receiving party’s request must identify the Confidential Information  
7 and/or materials designated “CONFIDENTIAL” that the receiving party wishes to  
8 use, and identify the purpose for which it wishes to use Confidential Information  
9 and/or materials designated “CONFIDENTIAL.” If the parties cannot resolve the  
10 question of whether the receiving party can use Confidential Information and/or  
11 materials designated “CONFIDENTIAL” for a purpose other than the prosecution  
12 or defense of this action within fourteen (14) days of the producing party’s receipt  
13 of such a request, the receiving party may move the Court for a ruling on the  
14 receiving party’s request. In the event any party files a motion seeking to use  
15 Confidential Information and/or materials designated “CONFIDENTIAL” for a  
16 purpose other than the prosecution or defense of this action, the Confidential  
17 Information and/or materials designated “CONFIDENTIAL” shall be submitted to  
18 the Court, under seal, for an in-camera inspection. Any Confidential Information  
19 and/or materials designated “CONFIDENTIAL” at issue must be treated as  
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1 Confidential Information, as designated by the producing party, until the Court has  
2 ruled on the motion or the matter has been otherwise resolved.

3 11. At any stage of these proceedings, any party may object to a designation  
4 of materials as Confidential Information. The party objecting to confidentiality must  
5 notify, in writing, Counsel for the producing party of the objected-to materials and  
6 the grounds for the objection. If the dispute is not resolved consensually between  
7 the parties within fourteen (14) days of receipt of such a notice of objections, the  
8 objecting party may move the Court for a ruling on the objection. In the event any  
9 party files a motion challenging the designation or redaction of information, the  
10 document shall be submitted to the Court, under seal, for an in-camera inspection.  
11 The materials at issue must be treated as Confidential Information, as designated by  
12 the producing party, until the Court has ruled on the objection or the matter has been  
13 otherwise resolved. In any challenge to the designation of materials as  
14 CONFIDENTIAL, the burden of proof shall be on the party seeking protection.

15 12. All Confidential Information must be held in confidence by those  
16 inspecting or receiving it. To the extent the Confidential Information has not been  
17 disclosed prior to and apart from this litigation, it must be used only for purposes of  
18 this action. If the Confidential Information was exchanged between the parties prior  
19 to and apart from this litigation for purposes of conducting their respective  
20 businesses, the parties may continue to use that otherwise Confidential Information

1 for that purpose. The parties may not distribute the Confidential Information beyond  
2 those persons or entities that had received the Confidential Information prior to this  
3 litigation. In addition, counsel for each party, and each person receiving Confidential  
4 Information, must take reasonable precautions to prevent the unauthorized or  
5 inadvertent disclosure of such information. If Confidential Information is disclosed  
6 to any person other than a person authorized by this Order, the party responsible for  
7 the unauthorized disclosure must immediately bring all pertinent facts relating to the  
8 unauthorized disclosure to the attention of the other parties and, without prejudice  
9 to any rights and remedies of the other parties, make every effort to prevent further  
10 disclosure by the party and by the person(s) receiving the unauthorized disclosure.

11 13. No party will be responsible to another party for disclosure of  
12 Confidential Information under this Order if the information in question is not  
13 labeled or otherwise identified as such in accordance with this Order.

14 14. If a party, through inadvertence, produces any Confidential  
15 Information without labeling or marking or otherwise designating it as such in  
16 accordance with this Order, the producing party may give prompt written notice to  
17 the receiving party that the materials produced are deemed Confidential Information,  
18 and that the materials produced should be treated as such in accordance with that  
19 designation under this Order. The receiving party must treat the materials as  
20 confidential, once the producing party so notifies the receiving party. If the receiving

1 party has disclosed the materials before receiving the designation, the receiving party  
2 must notify the producing party in writing of each such disclosure. Counsel for the  
3 parties will agree on a mutually acceptable manner of labeling or marking the  
4 inadvertently produced materials as “CONFIDENTIAL.”

5 15. Nothing within this Order will prejudice the right of any party to  
6 object to the production of any discovery material on the grounds that the material  
7 is protected as privileged or as attorney work product.

8 16. Nothing in this Order will bar Counsel from rendering advice to their  
9 clients with respect to this litigation and, in the course thereof, relying upon any  
10 information designated as Confidential Information, provided that the contents of  
11 the information must not be disclosed.

12 17. Materials designated “CONFIDENTIAL,” and all information in  
13 them or derived from them, may be used or offered into evidence at the trial of this  
14 suit, or at any hearing in this litigation. The party intending to offer material  
15 designated “CONFIDENTIAL” must give the party that designated the materials  
16 “CONFIDENTIAL” sufficient advance notice to seek protection or relief from the  
17 Court.

18 18. This Order is entered for the purposes of providing appropriate  
19 confidentiality protections and facilitating the production of documents and  
20 information without involving the Court unnecessarily in the process. Nothing in

1 this Order nor the production of any information or document under the terms of the  
2 Protective Order nor any proceedings pursuant to this Order shall be deemed: (a) to  
3 have the effect of an admission or waiver by either party; or (b) to alter the  
4 confidentiality or non-confidentiality of any document or information; or (c) to alter  
5 any existing obligation of any party or the absence thereof. This Order will be  
6 without prejudice to the right of any party to oppose production of any information  
7 for lack of relevance or any other ground other than the mere presence of  
8 Confidential Information. The existence of this Order must not be used by either  
9 party as a basis for discovery that is otherwise improper under the Federal Rules of  
10 Civil Procedure.

11 19. Information designated “CONFIDENTIAL” pursuant to this Order also  
12 may be disclosed if: (a) the party or non-party making the designation consents to  
13 such disclosure; (b) the Court, after notice to all affected persons, allows such  
14 disclosure; or (c) the party to whom Confidential Information has been produced  
15 thereafter becomes obligated to disclose the information in response to a lawful  
16 subpoena, provided that the subpoenaed party gives prompt notice to Counsel for  
17 the party which made the designation, and permits Counsel for that party sufficient  
18 time to intervene and seek judicial protection from the enforcement of this subpoena  
19 and/or entry of an appropriate protective order in the action in which the subpoena  
20 was issued.

1           20. Nothing in this Protective Order shall limit any producing party's use  
2 of its own documents or shall prevent any producing party from disclosing its own  
3 Confidential Information to any person. Such disclosures shall not affect any  
4 confidential designation made pursuant to the terms of this Order so long as the  
5 disclosure is made in a manner which is reasonably calculated to maintain the  
6 confidentiality of the information. Nothing in this Order shall prevent or otherwise  
7 restrict Counsel from rendering advice to their clients, and in the course thereof,  
8 relying on examination of stamped confidential information.

9           21. The restrictions and obligations set forth within this Order will not  
10 apply to any information that: (a) the parties agree should not be designated  
11 Confidential Information; (b) the parties agree, or the Court rules, is already public  
12 knowledge; or (c) the parties agree, or the Court rules, has become public knowledge  
13 other than as a result of disclosure by the receiving party, its employees, or its agents,  
14 in violation of this Order. Within thirty (30) days of the final termination of this  
15 action, including any and all appeals, Counsel for each party must purge all  
16 Confidential Information from all machine-readable media on which it resides and  
17 must either (a) return all Confidential Information to the party that produced the  
18 information, including any copies, excerpts, and summaries of that information, or  
19 (b) destroy same. With respect to paper copies, return or destruction of Confidential  
20 Information is at the option of the producing party. Notwithstanding the foregoing,

1 Counsel for each party may retain all pleadings, briefs, memoranda, motions, and  
2 other documents filed with the Court that refer to or incorporate Confidential  
3 Information, and will continue to be bound by this Order with respect to all such  
4 retained information, after the conclusion of this litigation. Further, attorney work  
5 product materials that contain Confidential Information need not be destroyed, but,  
6 if they are not destroyed, the person in possession of the attorney work product will  
7 continue to be bound by this Order with respect to all such retained information,  
8 after the conclusion of this litigation.

9 22. Any party may designate as “CONFIDENTIAL” any materials that  
10 were produced during the course of this action without such designation before the  
11 effective date of this Order, as follows:

12 (a) Parties to this action may designate such materials by sending  
13 written notice of such designation, accompanied by copies of the designated  
14 materials bearing the appropriate legend of “CONFIDENTIAL” to all other  
15 parties in possession or custody of such previously undesignated materials.  
16 Any party receiving such notice and copies of designated materials pursuant  
17 to this subparagraph shall return to the producing party all undesignated  
18 copies of such materials in its custody or possession, or shall affix the  
19 appropriate legend to all copies of the designated materials in its custody or  
20 possession.

1 (b) Upon notice of designation pursuant to this paragraph, parties  
2 shall also: (i) make no disclosure of such designated materials or information  
3 contained therein except as allowed under this Order; and (ii) take reasonable  
4 steps to notify any persons known to have possession of such designated  
5 materials or information of the effect of such designation under this Order.

6 (c) All such designations must be made within thirty (30) days of the  
7 date of this Order.

8 24. Transmission by e-mail or facsimile is acceptable for all notification  
9 purposes within this Order.

10 25. This Order may be modified by agreement of the parties, subject to  
11 approval by the Court.

12 26. The Court may modify the terms and conditions of this Order for good  
13 cause, or in the interest of justice, or on its own order at any time in these  
14 proceedings.

15 27. After termination of this action, the provisions of this Order shall  
16 continue to be binding, except with respect to those documents and information that  
17 became a matter of public record. This Court retains and shall have continuing  
18 jurisdiction over the parties and recipients of Confidential Information and materials

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1 designated as confidential for enforcement of the provisions of this Order following  
2 termination of this litigation.

3 Dated October 13, 2021.



*Thomas O. Rice*

THOMAS O. RICE  
United States District Judge

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## APPENDIX "A"

## AGREEMENT TO RESPECT CONFIDENTIAL INFORMATION

I have read and understand the Protective Order entered in the case of BRUCE HARALA v. SUN LIFE ASSURANCE COMPANY OF CANADA, Case No. 2:20-cv-00476-TOR, pending in the Eastern District of Washington, a copy of which Order has been delivered to me to keep with my copy of this Agreement. I agree to be bound by all the terms of the Protective Order and hereby agree not to use or disclose the Confidential Information to be disclosed to me except for purposes of this litigation as set forth in the Protective Order. I further agree and attest to my understanding that breach of this Agreement is directly actionable by the party which designated the Confidential Information which is disclosed, and that in the event I fail to abide by the terms of the Protective Order, I may be subject to sanctions.

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Signature

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Name (Printed)

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Street Address

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City

State

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Zip

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Occupation or Business